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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/495,005	01/31/2000	Christopher R. Clare	GYN-032	4248

7590 07/05/2002

SELITTO, BEHR & KIM
203 MAIN STREET
METUCHEN, NJ 08840

EXAMINER

GHAFOORIAN, ROZ

ART UNIT

PAPER NUMBER

3763

DATE MAILED: 07/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/495,005

Applicant(s)

CLARE ET AL.

Examiner

Roz Ghafoorian

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 January 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 January 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 & 5. 6) ☐ Other: _____

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DETAILED ACTION

Election/Restrictions

Claim 26 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected method of use, there being no allowable generic or linking claim.

Election was made **without** traverse in Paper No. 7.

Drawings

1. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the volume" in line1, "the body" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 2 recites the limitation "the duration" in line 3, "said data" in line 4, and "set point" in line 6. There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the limitation "a vacuum level" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 17 recites the limitation "said algorithm" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-4 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S Patent No 6283937 to Takamatsu et al.

Takamatsu teaches an irrigation/aspirations apparatus, which contains a receptacle for receiving fluid from surgical site, a source of vacuum and a control unit. It contains a pressure sensor, which controls how long (duration of time) the valve would stay open depending of the suction pressure. The valve 18 has two positions, as well as a valve actuator. This apparatus also contains a pump.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S Patent No. 6283937 to Takamatsu et al, and further in view of U.S Patent No. 4810242 to Sundblom et al and U.S Patent No 3833018 or U.S Patent No. 4108207 to Doody. Takamatsu teaches an irrigation/aspiration system with one receptacle for receiving fluid from the surgical site, a vacuum source (pump), with a vacuum control unit, a vacuum sensor, and a vent valve (fig 1, # 18). Takamatsu however, does not teach a multipart valve and a microprocessor in the vacuum control. Sundblom disclose a surgical cassette proximity sensing and latching apparatus. Sundblom's apparatus provides the surgeon with a microprocessor, which allows the surgeon to be able to request more or less vacuum without having to use his hands or tell another person how much vacuum he wants. It also allows to a fast response time for changes in the desired vacuum levels, and for the system to display both the actual vacuum and the desired maximum vacuum. But to allow for microprocessor to work on Takamatsu's system one needs a multi-ported valve. Brooks and Doody both teach multi-ported valves.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to have combined these teachings, because according to Sundblom a microprocessor allows the surgeon to be able to request more or less vacuum without having to use his hands or tell another person how much vacuum he wants. It also allows to a fast response time for changes in the desired vacuum levels,

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and for the system to display both the actual vacuum and the desired maximum vacuum. (Col. 1, lines 45-50)

5. Claims 1, and 21-25 rejected under 35 U.S.C. 103(a) as being unpatentable over U.S Patent No. 5052341 to Woolford et al and further in view of U.S Patent No.4816695 to Lavin.

Woolford teaches a system which contains a conduit, a vacuum source, a vacuum control, a pump, a dampener, and a fluid sensor. Woolford, however, does not teach an optical sensor that allows light emitting element and a light detector. Lavin teaches an optical fluid detector.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have combined these teachings, because according to Lavin this type of sensor is low coast to fabricate and is able to operate over a wide rage of temperatures. (Col. 1, lines 30-31)

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roz Ghafoorian whose telephone number is 703-305-2336. The examiner can normally be reached on 8:30am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

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RG

June 27, 2002



BRIAN L. CASLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700